IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 33 OF 2002.

1. Mr. Belarbina Dias Mandoli.
2. Mr. Vital Dias Mandoli.
3. Miss Carminia Dias Mandoli
4. Mrs. Avita Dias Mandoli;
   and her husband,
5. Shri Dexter Rodrigues.
6. Mrs. Teodolinda Dias Mandoli,
   and her husband,
7. Shri Lucio C. Viegas,
   all majors, residing at Calvada,
   Cavelossim, Salcete, Goa. .... Appellants.

VERSUS

1. Mr. G.A. A. Gonsalves,
   resident of Gujira, Santa Cruz,
   Ilhas, Goa.
2. Mrs. Bernardetta Dias Mandoli,
   major, residing at St. Lourencio,
   Agacaim, Ilhas, Goa.
3. Caetano Francisco Filipe Dias
   Mandoli, major, Physician,
   resident of St. Lourencio, Agacaim,
   Ilhas, Goa.
4. Miss Maria Julete Aurora Philip Dias,
   Mandoli alias Juliata Dias Mandoli,
   major, spinster, Government service,
   resident of St. Lourencio, Agacaim,
   Ilhas, Goa.
5. Maria Exaltacao Dias Mandoli,
   alias Marianina Dias Mandoli,
   major, Spinster, teacher, resident of
   St. Lourencio, Agacaim, Ilhas, Goa. ..... Respondents.

Shri M. S. Sonak, Advocate for the Appellants.

Shri S.G. Dessai, Senior Advocate with Shri A. Palekar, Advocate for the Respondents.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE OF RESERVING THE JUDGMENT: 4.10.2004
DATE OF PRONOUNCING THE JUDGMENT: 12.10.2004

J U D G M E N T: (PER BRITTO, J.)

This appeal is filed by the legal heirs/representatives of original plaintiff no.2 Felix Dias Mandoli against the judgment/decree dated 18.7.2001 of the learned Civil Judge, S.D. at Quepem in Special Civil Suit No. 2/1989.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said Civil Suit.

3. There is no dispute that Frederico Guilherme Rogaciano Dias Mandoli, Felix Dias Mandoli and Antonio Dias Mandoli were the sons of Aniceto Dias and Maria Exaltacao Dias. Upon the death of their parents, the said Aniceto and Maria Exaltacao, Inventory proceedings bearing No.17531/1962 were held and by Order dated 22.6.1968 allotment was made. In the said allotment property under item (verba) No.45 was allotted to Antonio Dias Mandoli and Felix Dias Mandoli in 2/3 and 1/3 share, respectively, and item (verba) No.46 was allotted to the said Frederico Gilherme Rogaciano Dias Mandoli. The said item No.45 was described as property “Comproi” and Item No.46 was described as property “Comproi” (second addition).

4. There is also no dispute that Item No.45 corresponds to property

having Land Registration No.21256 and Item No.47 corresponds to property having Land Registration No.21257, in the Land Registration Office at Quepem.

5. The dispute between the said plaintiff No.2 and defendant No.1 was regarding the land admeasuring 40,825 sq.m. surveyed under Nos.123/1 and 123/2 of village Deao of Quepem taluka.

6. There is also no dispute that the property described under Item No.45 is surveyed under Nos.120/1 and 120/2. However, the case of the plaintiffs was that what was allotted to the plaintiffs under Item No.45 was one property surveyed not only under Nos.120/1 and 120/2, but also under survey Nos. 123/1 and 123/2 and that the said survey into various divisions was made on the basis of various plantations done in the said property. On the other hand, it was the case of the defendant (who was subsequently designated as defendant No.1) was that the property purchased by him by sale deed dated 15.9.1982 surveyed under Nos.123/1 and 123/2 was the property “Comproi” (Segund Adicao) which was allotted to the said Frederico Guilherme Rogaciano Dias Mandoli under Item No.46. It was also his case that the name of Antonio Dias Mandoli was wrongly shown in the survey records.

7. The said suit was initially filed by the widow of Antonio Dias Mandoli by name Mrs. Bernadette Dias Mandoli (Plaintiff No.1)

through her attorney and the said Felix Dias Mandoli (Plaintiff No.2) also through her daughter and attorney Mrs. Teodolinda Dias Mandoli who has also subsequently deposed on behalf of the plaintiff as P.W.1.

8. Subsequently, by application dated 1.8.89 and by Order of the trial Court dated 19.3.1990 the other children of the said Antonio Dias Mandoli and Bernadette Dias Mandoli were joined as plaintiffs No.1(a) to 1(c). Thereafter the plaintiff No.2 Felix Dias Mandoli found that the plaintiff No.1 namely the said Bernadette Dias Mandoli and her children Caetano Francisco, Maria Julieta and Maria Exaltacao had distanced themselves from the claim in the suit or for that matter did not support the case of the plaintiff No.2, and, therefore,by virtue of application dated 17.7.1995 and by order of the trial Court of the same date, they were transposed as defendants No.2 to 5, but the said defendants No.2 to 5 did not contest the suit though they gave their Power of Attorney to Advocate Shri Noel Afonso. The change of the above fact situation which came about after the filing of the suit ought to have been mentioned in the judgment of the learned Civil Judge, S.D., Quepem. Although the plaintiff No.2 namely the said Felix Dias Mandoli remained to be the only plaintiff in the suit, the plaint as well as the prayers as originally framed continued to be the same. In other words, the plaintiff No.2 after transposing plaintiff No.1 as defendant No.2 and her other children as defendants No.3 to 5, did not carry out any amendment to the plaint ,including the said

prayers, which continued to read as follows :-

" (a) for a declaration, directing and ordering the defendant to acknowledge the plaintiffs as the sole owners and possessors of the property described under Land Registration No. 21256 ... etc. , and

(b) directing the Sub-Registrar of Quepem taluka to effect the cancellation of the sale deed executed on 15.9.1982 and registered under Regn. No. 251 ..... etc. "

9. Since the plaintiff No.2 was admittedly the owner of only 1/3 share of item No.46 corresponding to the property having Land Registration No.21256, he could not have been declared as the sole owner and possessor of the said property. As far as prayer (b) was concerned, the same could also not have been granted in favour of plaintiff No.2 in the absence of plaintiff No.2 joining the said Frederico Guilherme Rogaciano Dias Mandoli and his wife or their legal representatives in case they were not living at the time of filing of the suit.

10. The immediate cause for filing of the suit, appears to have been the acquisition of an area of 7650 sq.m. from survey No.123/1 by virtue of Notification published on Gazette dated 27.1.1986 for which compensation of Rs.1,10,692 was payable and then again of an additional area of 3125 sq.m. from survey Nos.123/1 and 123/2 by virtue of Notification published on Gazette dated 18.2.1988 for which

compensation of Rs.41,405/- was payable.

11. Admittedly, Item No.46 of the Inventory proceedings does not give the northern boundary of the property Comproi allotted to the said Antonio Dias Mandoli and Felix Dias Mandoli but its northern boundary could certainly be found from the Land Registration certificate wherein its northern boundary has been shown as river and property Comproi in the possession of the heirs of Luciano. The other three boundaries as mentioned on item No.56 correspond to the property described under Land Registration No.21256. The eastern boundary of Item No.57 which corresponds to property having Land Registration No.21257 is the property Comproi of Jose Marcelino Nogueira presently in possession of the heirs of Luciano Peregrino D'Costa and with the property Comproi of the heirs of Nuno Bernardo de Piedade Nogueira. Likewise, the western boundary of Item no.56 corresponding to property Comproi having Land Registration No.21256 is of the property Comproi of the heirs of Nuno Bernardo de Piedade Nogueira and the property Comproi of Jose Marcelino Nogueira presently in possession of the heirs of Luciano Peregrino D'Costa. In other words the eastern boundary of Item No.57 is the western boundary of Item No.56. Again, the properties claimed by plaintiff No.2 and defendant No.1 had between them properties Comproi of the heirs of Nuno Bernardo de Piedade Nogueira and Comproi of Luciano Peregrino D'Costa. P.W.1 Teodolinda has admitted that the property allotted to them has land registration

No.21256 and that the property sold by deed dated 15.9.82 has land registration No.21257. The very fact that both properties have different land registration numbers is an indication that they are two different properties. This admission is more than sufficient to destroy the case pleaded by Plaintiff No.2 that the property allotted to them is also surveyed under Nos.123/1 and 123/2. Secondly, it is an admitted position that property item No.56 is surveyed under S.No.120/1 and 120/2. The western boundary of this property is not the eastern boundary of property under item No.57 but on the contrary the western boundary are the properties of the heirs of Nuno Bernardo de Piedade Nogueira and the property of Jose Marcelino Nogueira and therefore the plea of Plaintiff that the entire property (both properties) is one unit cannot be accepted because both properties are separated by other properties. Thirdly, property under Item No.57 (Land registration No.21257) does not have river for its northern and eastern boundaries, as can be seen from survey plan produced. Therefore, the property surveyed under No.123/1 and 123/2 cannot be part of property surveyed under Nos.120/1 and 120/2. In fact, as rightly observed by the learned Trial Court, the plaintiff No.2 did not even seek the assistance of an expert to identify the property allotted to the plaintiff No.2 and the said Antonio Dias Mandoli as extending into sub-divisions No.123/1 and 123/2. A faint attempt was made before this Court by Shri Sonak, the learned Advocate of the plaintiff No.2 that an opportunity be given to the plaintiff No.2 to appoint such an expert by remanding the case to the

trial Court which attempt was resisted by Shri Dessai, the learned senior Counsel of defendant No.1, and in our view rightly, by stating that the plaintiff was always free to get an expert appointed to identify the boundaries of the property claimed by plaintiff No.2 in the course of the trial of the suit in case Plaintiff No.2 wanted to do the same. In the light of the common boundary mentioned in Items No. 46 and 47 corresponding to the properties under Land Registration Nos.21256 and 21257 it could not be said that the property allotted to plaintiff No.2 and the said Antonio Dias Mandoli extended beyond the properties of the said heirs of Nuno Bernardo Piedade Nogueira and Jose Marcelino Nogueira, notwithstanding the fact that a small portion of both the properties have been shown as touching one another on the southern side between survey Nos.120/1 and 123/2 in the survey records.

12. The plaintiff No.2 could not derive any benefit from the fact that survey Nos.123/1 and 123/2 were recorded in the name of Antonio Dias Mandoli. The defendant No.1 had given a plausible explanation that the name of the said Antonio came to be recorded against survey Nos.123/1 and 123/2 because at the relevant time of survey he was the Administrator of the inventory proceedings which were pending. Moreover, the fact that the name of the said Antonio Dias Mandoli is seen on the survey records of survey Nos.123/1 and 123/2 is no consolation to plaintiff No.2 as the said Antonio Dias Mandoli is as much a brother of plaintiff No.2 as well as the said Frederico

Guilherme Rogaciano Dias Mandoli. The said Antonio Dias Mandoli and/or his legal representatives abandoned the case pleaded by the plaintiff No.2 nor they came forward to support the case of plaintiff No.2 in evidence. That apart, an entry in the survey records is no proof of title in favour of plaintiff No.2.

13. The defendant No.1 was able to establish the boundaries with the help of the survey plan that the property claimed by plaintiff No.2 ended with the property Comproi of the heirs of Nuno Bernardo de Piedade Nogueira and Jose Marcelino Nogueira presently in possession of the heirs of Luciano Peregrino D'Costa and surveyed under Nos.121/0 and 122/0. From whatever angle one looks at the case of Plaintiff No.2 the property allotted to the plaintiff No.2 along with the said Antonio Dias Mandoli and surveyed under Nos. 120/1 and 120/2 could never extend into the property surveyed under Nos.123/1 and 123/2. In fact, it was also admitted by P.W.1 Teodolina that the property surveyed under No.123/1 and 123/2 did not touch on any side of the property allotted to them though, as can be seen from the survey plan, a small portion touches survey Nos.123/2 and 120/2.

14. In our view, the suit of the plaintiff No.2 was rightly dismissed by the learned trial Court. In fact, it could not be said that plaintiff No.2 did not know about the sale deed dated 15.9.1982 prior to 9.9.88. In fact, it was admitted by P.W.1 that they were aware of the

notice published by the said Frederico Guilherme Rogaciano Dias Mandoli in Navhind Times dated 11.12.81 ant yet the plaintiff No.2 did not take any further action as regards the notice. It therefore appears that the plaintiff No.2 filed false claim without even payment of adequate court fees only with a view to lay his hands on the compensation which was payable on account of acquisition of part of the said property surveyed under Nos.123/1 and 123/2.

15. In view of the above, we find there is no merit in this appeal. Consequently the same is hereby dismissed with costs by the plaintiff No.2 in favour of the defendant No.1, throughout.

H. B. MARLAPALLE, J.

N. A. BRITTO, J.

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